

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RASUL GRAY,

Plaintiff,

v.

MARK GARMAN, *et al.*,

Defendants.

No. 4:21-CV-01221

(Chief Judge Brann)

ORDER

AND NOW, this 1st day of July 2022, in accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED** that:

1. Defendants' motion (Doc. 14) to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) is **GRANTED** in part and **DENIED** in part, as follows:
 - a. Defendants' motion is **GRANTED** as to Gray's Eighth Amendment claim of deliberate indifference to serious medical needs. Said claim is **DISMISSED** without prejudice as to all Defendants.
 - b. Defendants' motion is **GRANTED** in part as to Gray's Eighth Amendment failure-to-protect claim. Said claim is **DISMISSED** with prejudice as to defendant Nicki J. Paul but may proceed against defendants Mark Garman and Gerald McMahon.
 - c. Defendants' motion is **DENIED** in all other respects.
2. Gray's state-law tort claims are **DISMISSED** without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief may be granted.

3. Gray, if desired, may file an amended complaint in conformity with the accompanying Memorandum within **21 days** of the date of this Order, or on or before **July 22, 2022**.
4. If no amended complaint is timely filed, this case will proceed on the following Section 1983 claim: Eighth Amendment failure-to-protect against defendants Garman and McMahon.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann

Chief United States District Judge